

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 528-B

Case No. 86-21F/85-9P

(PUD & Map Amendment @ Square 1661)

June 8, 1992

On April 13, 1987 by Z.C. Order No. 528, the Zoning Commission for the District of Columbia granted approval to an application from the Miller Companies for a planned unit development (PUD) and related map amendment from R-5-B and C-2-B to R-5-C and C-3-B for lots 1, 14, 15, 26, 800, 804, and 808 in Square 1661. The PUD site is in the square bounded by Wisconsin and Western Avenues, Military Road, and Jenifer and 43rd Streets N.W.

Z.C. Order No. 528 approved the construction of a mixed-use development including residential, office and retail uses, subject to certain guidelines, conditions and standards.

Condition No. 40 of Z.C. Order No. 528 states the following:

"The planned unit development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit, as specified in Sub-section 2407.2 and 2407.3 of Zoning Regulations. Construction shall start within three years of the effective date of this order."

Z.C. Order No. 528 became final and effective on May 8, 1987. The validity of this order was for two years; that is, until May 8, 1989, provided that application for a building permit was filed within that period of time, after which construction would have to start by May 8, 1990. An application for a building permit was filed in March 1989.

By letter dated April 6, 1990, counsel for the Friendship Heights D.C. Limited Partnership, the new applicant, filed a motion to extend the validity of Z.C. Order No. 528, pursuant to 11 DCMR 2406.10. The motion requested a two-year extension within which to begin construction. The basis for that request was the downturn in the real estate market, resulting in difficulties securing construction financing to begin the project by May 8, 1990.

On June 11, 1990 by Z.C. Order No. 528-A, the Commission granted the applicant's request for extension and stated that:

"The Zoning Commission hereby orders that the validity of Z.C. Order No. 528 be **EXTENDED** for a period of two years; that is, until May 8, 1991. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within three years or not later than May 8, 1992."

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval.

By letter dated February 3, 1992, counsel for the applicant, the Xerox Credit Corporation, owner of the property and the successor in interest to the PUD, requested a two-year extension of Z.C. Order Nos. 528 and 528-A.

The letter, in part, stated the following rationale for the present extension request:

- a. Pursuant to the action of the U.S. Bankruptcy Court of the District of Columbia, the Xerox Credit Corporation acquired the property in a foreclosure auction held on June 25, 1991. Xerox Realty Corporation is the real estate advisory arm of the Xerox Credit Corporation. It should be clearly noted by the Commission that Xerox is not a developer, and has no interest in such role. Therefore, the timing of the actual development of the property cannot be controlled directly by Xerox, but is controlled by the willingness and feasibility of other developers to assume the project and its obligations;
- b. Since assuming ownership of the property in June 1991, Xerox has expeditiously attempted to determine the best way to proceed with the project. Xerox has spent a considerable amount of time and effort to obtain all relevant plans, permits and related information about the project and to evaluate this information;
- c. In addition, Xerox has also been developing a marketing strategy for ensuring the development of the property in a timely fashion. Given today's market conditions, and the fact that it has only had title to the property for approximately 6 months, Xerox has not been able to determine a suitable means for managing the asset. Efforts to date have included contacting other developers, brokers, potential users and tenants and receiving proposals from potential users and developers. Options being evaluated include, but are not limited to, the sale of the property, a land lease or a joint venture development of the property; and

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- d. Because Xerox has recently gained ownership of the property, and the lack of a suitable developer of the site, it is not possible that construction can begin prior to May 8, 1992. An additional two-year period is therefore requested before construction is required to begin.

The Zoning Commission received letters and comments from Advisory Neighborhood Commission (ANC) 3E and from other organizations in support of the extension request. ANC-3E and the Friendship Neighborhood Coalition (FNC) supported the extension subject to certain construction guidelines, conditions, and standards.

The District of Columbia Office of Planning (OP), by a memorandum dated March 30, 1992, recommended approval for the extension, stating that the Comprehensive Plan Land Use designation for the area had not changed since approval of the PUD.

The proposed decision of the Zoning Commission to grant a two-year extension, with conditions, was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC in a report dated May 29, 1992 indicated that the proposed action would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

On April 6, 1992, at its regular monthly meeting, the Zoning Commission considered the request of the applicant and the aforementioned comments, and determined that an extension of time in this instance is reasonable. The Commission believes that the rationale for granting the approval for the PUD has not changed, and that no adverse consequences will occur as a result of the approval.

The Commission believes that approval of this request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

This extension of the validity of the approved PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of a two-year extension of the validity of Z.C. Order Nos. 528 and 528-A in Case No. 86-21F/85-9P (Final PUD and Map Amendment from R-5-B and C-2-B to R-5-C and C-3-C for lots 1, 14, 15, 26, 800, 804

and 808 in Square 1661 located at 5333 Wisconsin Avenue, N.W.). The PUD extension is subject to the following guidelines, conditions and standards:

1. The applicant shall file an application for a building permit no later than May 8, 1993, pursuant to 11 DCMR 2406.8. Construction should start within one year; that is, not later than May 8, 1994.
2. The applicant shall address the following construction issues and concerns of the Friendship Neighborhood Coalition and ANC-3E:
  - a. Designation of Agents for Formal Communication:
    - (1) Xerox Ombudsman
    - (2) Chair of FNC Monitoring Committee
  - b. Compliance with Zoning Order:
    - (1) Daily work hours
    - (2) Seasonal variations
    - (3) Blasting schedule
    - (4) Notice to parties for special permit requests
    - (5) Responsibility for subcontractors
  - c. Construction Site Management:
    - (1) Maintenance pending commencement of construction (weed cutting, etc.)
    - (2) Lighting at night
    - (3) Location of construction trailer
    - (4) Nature of construction fence
    - (5) Trash clean-up
    - (6) Mud removal
    - (7) Window washing
    - (8) Off-site "picnicking" by workers
  - d. Traffic and Parking:
    - (1) Control of truck plan
      - (a) Truck management plan
      - (b) Queuing and routing
    - (2) Supplemental traffic mitigation study
      - (a) North and south traffic on 41st and 42nd Streets
      - (b) Weekend traffic

(3) Parking of workers' vehicles

e. Protection of Property Owners:

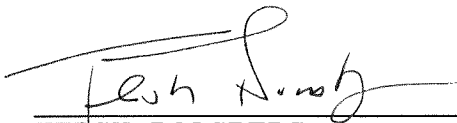
- (1) Pre- and post-construction appraisals
  - (a) Condition
  - (b) Value
- (2) Construction bond
  - (a) Payment for damages
  - (b) Other compensation
- (3) Liquidated damages for violations of agreement, zoning order or other conditions
- (4) Compensation for diminished property value

Vote of the Commission was taken at the monthly meeting on April 6, 1992 by vote of 3-0 (Maybelle Taylor Bennett, John G. Parsons, and William L. Ensign, to extend for two years - Tersh Boasberg abstained, and Lloyd D. Smith, not present not voting).

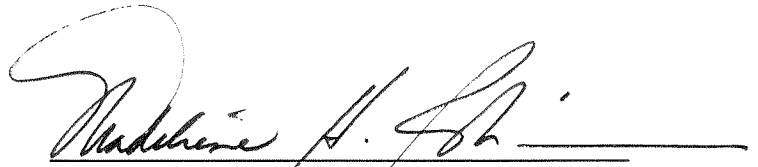
This order was adopted by the Zoning Commission at the public meeting on June 8, 1992 by a vote of 4-0 (John G. Parsons, Lloyd D. Smith, William L. Ensign, and Tersh Boasberg, to adopt - Maybelle Taylor Bennett, not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on

JUN 25 1992



TERSH BOASBERG  
Chairman  
Zoning Commission



MADELIENE H. ROBINSON  
Acting Director  
Office of Zoning